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EXAMINER
NEURAUTER, GEORGE C

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _04 March 2005_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-26_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-26_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claims 1-26 are currently presented and have been examined.

Response to Arguments

Applicant's arguments filed 4 March 2005 have been fully considered but they are not persuasive.

The Applicant argues that Fee does not teach or suggest electing a second server automatically as the active manager server to replace the first server. Fee discloses:

"Certain applications need to be supported by the chassis, but can be executed on any module...At start-up or after a system change (module failure/removal, etc.), an election process is required to discover the best location(s) on which to run the chassis application(s)." (column 7, lines 48-53)

Given the Examiner's broadest reasonable interpretation of the claim as required by MPEP 2111 and the disclosures of Fee, Fee does disclose electing a second server automatically as the active server manager to replace the first server or "after a system change (module failure/removal, etc.), an election process is required to discover the best location(s) on which to run the chassis application(s)". In view of the disclosures of Fee and the claim's broadest reasonable interpretation, if the first server fails and is running the chassis application(s), a

process is started automatically and a second server is chosen

to replace the first server as the active manager server.

Therefore, Lee discloses the limitations of the claims and

the claims are not in condition for allowance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs

of 35 U.S.C. 102 that form the basis for the rejections under

this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or
a foreign country or in public use or on sale in this country, more than one
year prior to the date of application for patent in the United States.

Claims 1, 3-4, 6, 9-13, 15-21, and 23-26 are rejected under

35 U.S.C. 102(b) as being anticipated by US Patent 5 522 042 A

to Fee et al.

Regarding claim 1, Fee discloses a method comprising:

electing a first server (referred to throughout the

reference as "module") as active manager server ("best

location...to run the chassis application(s)"), wherein the

first server resides in a chassis; determining automatically, by

receiving an indication, if the first server has failed or has

been overloaded, wherein the indication is generated based on

health matrices and performance matrices; and electing a second

server automatically as the active manager server to replace the

first server as the active manager server in response to the

indication received, wherein the second server resides in the

chassis. (column 7, line 47-column 8, line 5, specifically

column 7, lines 49-53)

Regarding claim 3, Fee discloses the method of claim 1,

further comprising:

extracting the health metrics and performance metrics

("resources"), wherein the health metrics and performance

metrics are dynamic; replicating the health metrics and

performance metrics, wherein the replicating the health metrics

and performance metrics is performed periodically; and

dynamically updating a database ("slot table") populated with

the health metrics and performance metrics. (column 7, lines 19-

39)

Regarding claim 4, Fee discloses the method of claim 3,

wherein the health metrics are server-based. (column 7, lines

19-39)

Regarding claim 6, The method of claim 3, wherein the

performance metrics comprise operating system-based metrics,

kernel-based metrics, and server-based metrics. (column 7, lines

19-39)

Regarding claim 9, Fee discloses the method of claim 3,

further comprising replicating identification information,

wherein the identification information is static. (column 7,

lines 29-31)

Regarding claim 10, Fee discloses a high-availability

management system comprising:

a chassis comprising a plurality of slots; (column 4, lines

44-49)

a plurality of server modules coupled with the plurality of

slots, wherein a first server module of the plurality of server

modules is elected an active manager server; an indication to

automatically determine if the first server module as failed or

has been overloaded, wherein the indication is generated based

on health matrices and performance matrices; and a second server

module to automatically replace the first server module as the

active manager server in response to the indication received.

(column 4, lines 44-49; column 7, line 47-column 8, line 5,

specifically column 7, lines 49-53)

Regarding claim 11, Fee discloses the high-availability

management system of claim 10, further comprising a database

("slot table") coupled to the chassis for storing information

regarding chassis identification, slot identification, and

server module type. (column 6, line 50-column 7, line 19,

specifically "Chassis IP address", "Slot ID", and "Module Type")

Regarding claim 12, Fee discloses the high-availability management system of claim 10, wherein the first server module of the plurality of server modules is elected the active manager server based on a predetermined criteria. (column 7, line 47-column 8, line 5, specifically column 7, lines 53-61)

Regarding claim 13, Fee discloses the high-availability management system of claim 10, wherein a second server module of the plurality of server modules is elected the active manager server, based on the predetermined criteria, to replace the first server module as the active manager server when the first server module is to be replaced. (column 7, line 47-column 8, line 5, specifically column 7, lines 49-53)

Regarding claim 14, Fee discloses the high-availability management system of claim 10, wherein the election of the first server module as the active manager server is performed by middleware, wherein the middleware is a software. (column 7, line 47-column 8, line 5, specifically column 7, lines 62-65)

Regarding claim 15, Fee discloses the high-availability management system of claim 13, wherein the election of the second server module as the active manager server is performed by the middleware, wherein the middleware is a software. (column 7, line 47-column 8, line 5, specifically column 7, lines 62-65)

Regarding claim 16, Fee discloses the high-availability

management system of claim 10, wherein the first server module

is elected from a group comprising servers, telephone line

cards, and power substations. (column 4, lines 44-49; column 7,

line 47-column 8, line 5, specifically column 7, lines 49-61,

specifically line 60)

Regarding claim 17, Fee discloses a method of uninterrupted

management using sticky identification comprising:

assigning a chassis identification ("Chassis IP address")

to a chassis coupled to a computer, wherein the chassis

comprises a slot (column 4, lines 44-49); assigning a slot

identification ("Slot ID") to the slot based on the slot's

location in the chassis; assigning a server module type ("Module

Type") to the slot based on the chassis identification and the

slot identification, wherein the server module type indicates

server module characteristics; (column 6, line 50-column 7, line

19)

electing a first server module as active manager server,

wherein the first server module resides in the chassis;

determining automatically, by receiving an indication, if the

first server module has failed or has been overloaded, wherein

the indication is generated based on health matrices and

performance matrices; and electing a second server module

automatically as the active manager server to replace the first

server module as the active manager server in response to the

indication received, wherein the second server module resides in

the chassis. (column 4, lines 44-49; column 7, line 47-column 8,

line 5, specifically column 7, lines 49-53)

Regarding claim 18, Fee discloses the method of

uninterrupted management using sticky identification of claim

17, further comprising retaining the server module

characteristics corresponding to the server module type. (column

7, lines 6-19)

Regarding claim 19, Fee discloses the method of

uninterrupted management using sticky identification of claim

17, further comprising:

removing a first server module from the slot; coupling a

second server module to the slot; and managing the second server

module based on the server module characteristics corresponding

to the server module type, wherein the managing the second

server module is performed without updating a network management

system. (column 3, line 63-column 4, line 4)

Regarding claim 20, Fee discloses the method of

uninterrupted management using sticky identification of claim

17, further comprising:

assigning a user-defined chassis identification; ("Chassis
IP address")

assigning a user-defined slot identification; ("Slot ID")

assigning a user-defined module identification; ("Module
Type") and

retaining the user-defined chassis identification and the
user-defined slot identification and the user-defined module
identification. (column 7, lines 19-28)

Claims 21 and 23 are also rejected since claims 21 and 23
recite a machine readable medium that contain substantially the
same limitations as recited in claims 1 and 3 respectively.

Claims 24-26 are also rejected since claims 24-26 recite a
machine readable medium that contain substantially the same
limitations as recited in claims 17-19 respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which
forms the basis for all obviousness rejections set forth in this
Office action:

> (a) A patent may not be obtained though the invention is not identically
> disclosed or described as set forth in section 102 of this title, if the
> differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the
> art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 2 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fee et al.

Regarding claim 2, Fee discloses the method of claim 1, wherein the election is performed based on a predetermined

criteria. (column 7, line 47-column 8, line 5, specifically

column 7, lines 53-61)

Fee does not expressly disclose wherein the predetermined

criteria comprises electing a server with the lowest IP address

as the active manager server, however, Fee does disclose

electing a server with the lowest slot number as the active

manager server and also broadly suggests that other form of

predetermined criteria may be used to elect an active manager

server if necessary (column 7, line 47-column 8, line 5,

specifically column 7, line 67-column 8, line 3). Fee also

discloses that each server has an IP address (column 7, line

15).

It would have been obvious to one skilled in the art at the

time the invention was made to elect a server based on the

lowest IP address because the Applicant has not disclosed that

using the limitation undisclosed in Fee provides any sort of an

advantage, is used for a particular purpose, or solves a stated

problem. One of ordinary skill in the art, furthermore, would

have expected Applicant's invention to perform equally well with

the method of electing a active manager server based on the

lowest slot number described in Fee as recited in the claim

because, in absence of any disclosure by the Applicant of

specifically why electing based on the lowest IP address has any

sort of advantage over, for example, a random selection of a

server, Fee's method of electing an active manager server based

on the lowest slot number or any other predetermined criterion

as shown in Fee would perform equally as well as the Applicant's

method of selecting by the lowest IP address, something which

Fee suggests is possible based on the above disclosures.

Claim 22 is rejected since claim 22 recites a machine

readable medium that contains substantially the same limitations

as recited in claim 2.

Claims 5, 7, and 8 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Fee et al. in view of US Patent

Application Publication 2002/0062454 A1 to Fung.

Regarding claim 5, Fee discloses the method of claim 3.

Fee does not expressly disclose wherein the health metrics

comprise tracking power levels and temperature levels based on

predetermined thresholds, however, Fee does suggest that metrics

other than those disclosed may be also be tracked (column 7,

lines 33-39)

Fung discloses the above limitations (paragraphs 0138-0139)

It would have been obvious to one of ordinary skill in the

art at the time the invention was made to combine the method as

disclosed in Fee with the tracking of power levels and

temperature levels as disclosed in Fung since Fung discloses

that tracking power levels enables an active server manager

("Management Module") to shut down or cycle power on a server

module (paragraph 0139, lines 2-6) and tracking temperature

levels enables an active server manager to control the operation

of fans to keep temperatures at an appropriate level (paragraph

0138, lines 2-6). Fung also discloses that predetermined

thresholds enable notification of a user or the active server

manager (paragraph 0138, lines 6-8; paragraph 0139, lines 10-12)

Based on these specific advantages disclosed in Fung and that

both references are directed to server module monitoring using

an active server module, one of ordinary skill in the art would

have appreciated the advantages disclosed in Fung and would have

been motivated to combine the teachings of the references since

both references would be considered to be analogous based on

their related fields of endeavor.

Regarding claim 7, Fee discloses the method of claim 3,

wherein the performance metrics comprise tracking CPU

utilization and memory utilization. (column 7, lines 33-39)

Fee does not expressly disclose wherein tracking the CPU

utilization and memory utilization is based on predetermined

thresholds, however, Fund does disclose these limitations

(paragraph 0138, lines 6-8; paragraph 0139, lines 10-12).

Claim 7 is rejected since the motivations regarding the obviousness of claim 5 also apply to claim 7.

Regarding claim 8, Fee discloses the method of claim 3.

Fee does not expressly disclose wherein the method further comprises an alert mechanism to alert whenever the health metrics or the performance metrics violate the predetermined thresholds, however, Fung does disclose these limitations (paragraph 0138, lines 6-8; paragraph 0139, lines 10-12).

Claim 8 is rejected since the motivations regarding the obviousness of claim 5 also apply to claim 7.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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PRIMARY EXAMINER